Tithe and Tithe Rent-Charge.

THE following paper is an attempt to summarize the origin and history of tithes, and to give a short account of the existing law relating to tithe rent-charge. It does not purport to do more than deal with the facts, and the writer does not, therefore, enter into any discussion as to the political bearings of the subject.

I.

The first mention of tithes in English law, so far as can be ascertained, appears to have been in the decree of a Synod of 786. In this decree the payment is strongly enjoined, but it had no legal binding effect upon the laity. It was, however, shortly afterwards confirmed by the Conventions of the two kingdoms of Mercia and Northumberland, and it may therefore be considered that the payment has been compulsory since the latter part of the ninth century—that is to say, for upwards of eleven hundred years. By the "Laws of Edward and Guthrum" of about the year 900 the liability to tithe is expressly laid upon the Danes under Guthrum's dominion, and its payment was enforced by a penalty. Athelstan in 930 extended the provision to the whole kingdom. It is probable that long before tithes were made payable by law they were voluntarily offered by a large number of the laity, but it is impossible to speak with any certainty as to the extent of the practice.

Tithes are the tenth part of the annual increase or produce arising from land, the stock upon land, and the personal industry of the inhabitants. All those things which yield an annual increase by the act of God, with the aid of cultivation or other human labour are, with certain exceptions, liable to payment of tithe. Such things are said to be "titheable."

Tithes are of three kinds: (1) Prædial; (2) mixed; (3) personal.

1. Prædial tithes (from a Latin word meaning an estate or land) are those which "arise merely and immediately

from the ground, such as grain of all sorts, hay, wood, fruits, and herbs."

2. Mixed tithes are those which "arise from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof, as colts, calves, lambs, chickens, milk, cheese, and eggs."
3. Personal tithes are those which arise from the profits of personal labour and industry (manual occupations, trades, fisheries, and the like), and are chargeable upon the clear gain only after deduction of all charges. They were only payable where, and in so far as, the particular custom of the place allowed them. They seem to have gradually fallen into disuse, and for all practical purposes became obsolete at a very early date.

The most important of things which are not titheable are animals *feræ naturæ*, or kept for mere curiosity or pleasure, and things which are of the substance of the earth, such as stone, lime, chalk, and other minerals. Land which is barren is not titheable, and does not become so until it has been in cultivation for seven years.

As a general rule, every acre of land in the kingdom was liable to payment of tithes; but certain persons and lands were exempt, and lands might also be especially discharged.

The exemption or discharge might be either by custom or prescription, or by what is called a "real composition." The custom might be either *de modo decimandi*—that is, an arrangement whereby the tithes were discharged in some special manner; or *de non decimandi*—that is, a claim to be entirely exempt. The *modus* was either a pecuniary compensation, or some other yearly benefit to the parson. The claim *de non decimandi* applied to the Crown and spiritual persons and corporations. The discharge by a "real composition" was by means of an arrangement made between the owners of the lands and the parson, with the consent of the Ordinary and the

patron, whereby some land or other "real" recompense was given to the parson in lieu of the tithes. Of course, since tithes have been replaced by tithe rent-charges, there are statutory provisions for their redemption, which will be more fully noticed hereafter.

Tithes belong to that species of property which is known in law as an "incorporeal hereditament," and which has been defined as "a right issuing out of a thing corporate (whether real or personal), or concerning, or annexed to, or exercisable within, the same." It is in general subject to the same rules of ownership and the same laws of descent as a corporeal hereditament. Tithes being an incorporeal hereditament in realty, are themselves real estate, and not personal estate, and in so far as the same are transferable—that is to say, when they belong to lay impropriators—pass by deed of grant. The same rules apply to the rent-charges which have now taken their place.

II.

Tithes, when first instituted in France by Charlemagne, were distributed by him into four parts: one for the use of the Bishop, another for the maintenance of the fabric of the church, another for the poor, and the fourth for the incumbent. The Bishops' endowments subsequently became amply provided for, and they were prohibited from receiving their share of the tithes. The whole of the tithes then became payable to the parson or *persona ecclesiæ*, as representing in his own person the Church. It appears that in England originally every man was at liberty to pay his tithe to whatever priest and church he pleased, but as the division of the country into parishes developed, the tithes became payable to the parson of each parish. In extra-parochial places they would be payable to the King, whose duty it was to provide a pastor to minister in such places. The "arbitrary" consecrations of tithes, as the payment to whomsoever the person liable for them chose was called, lingered on for many years after they became strictly illegal. The influence of the regular clergy, or monks, was

exercised to deprive the secular or parochial clergy of the tithes in favour of their own monastic houses. This was not finally stopped until the reign of King John, when, by a decretal epistle of Pope Innocent III., the payment of the tithes to the parochial clergy was enjoined. This epistle, though not legally binding, was adopted by general consent, and became part of the *lex terræ*.

After the general formation of monasteries and the increase in their power and interest, there crept into usage the custom of "appropriating" parsonages and their emoluments—that is to say, the benefice was annexed to some corporation, either aggregate or sole, as patron. When the corporation to which the benefice became so annexed was a monastery, it was the custom for it to nominate someone of its own body to conduct the services without formally presenting him to the living, and it was thus enabled to retain for its own use a large part of the emoluments. Speaking of this appropriation, Blackstone says: "This contrivance seems to have sprung from the policy of the monastic Orders, who have never been deficient in subtile inventions for the increase of their own power and emoluments." The person deputed to officiate on behalf of the appropriating corporation became known as a "Vicarius," or Vicar, and his stipend was at the entire discretion of the appropriator. Owing to the way in which the needs of many parishes were neglected, it was enacted in the reign of Richard II. that in all such cases of appropriation the Bishop should ordain a competent sum out of the emoluments for the poor of the parish, and that the vicarages should be "sufficiently" endowed. This, however, so far as regards the Vicar, was not found to have the desired effect, as he still had no permanency of tenure, and was practically at the mercy of the Order of which he was usually a member. It was, therefore, further provided, in the reign of Henry IV., that the Vicar should be unconnected with any religious house, that he should be perpetual, and should be instituted and inducted, and, further, that he should be sufficiently endowed at the discretion of the Ordinary. In con-

sequence of these enactments, it became customary to set apart a certain portion of the emoluments for the use of the Vicar. This portion usually consisted of a part of the glebe land adjoining or near to the parsonage, and a certain share of the tithes. The share of the tithes so given again indicated the rapacity of the monastic houses, for in most cases it consisted of those tithes which were most troublesome to collect, and which became known subsequently as privy, small, or vicarial tithes. These small tithes were generally the mixed and personal tithes, and the prædial tithes other than corn, hay, and wood. There was, however, no uniformity of practice, and in some places the vicarages were more liberally endowed than in others.

This, then, in general terms, was the position at the time of the dissolution of the monasteries in the reign of Henry VIII. as regards all appropriated benefices, which, according to Selden, numbered more than one-third of all the parishes in England. The natural effect of the dissolutions would have been the disappropriating of the parsonages, but this was avoided by a special provision in the Statutes effecting the dissolutions whereby they were given to the King. As is well known, many of them were from time to time granted out by the Crown to laymen. These lay appropriations became known as "impropriations," the reason being, according to Spelman, that they were "improperly" in the hands of laymen. The result was that in a large number of cases the rectorial or great tithes became vested in laymen, and could be disposed of by them, whether by sale or otherwise, like any other species of property. They constituted an interest in land quite distinct from the land itself, and so much so that, if the rectorial tithes (being in the hands of a layman) and the lands in respect of which they were payable became vested in the same owner, there was no merger of interests, but the land and the tithes might be dealt with by him separately.

III.

In process of time tithes became in many cases converted into rent-charges under various enclosure and other local Acts. But nothing was done in a general way to effect this until the Tithe Commutation Act, 1836. Under this Act provision was made for the commutation of tithes in every parish, either by agreement between the owners of lands and the owners of tithes, or by compulsion. The commutation took the shape of a money payment, called tithe rent-charge, payable half-yearly on January 1 and July 1. Failing an agreement, the amount of the rent-charge in each parish was to be such a sum as represented the clear average value of the tithes for the seven years preceding the year 1836, based on the price of wheat, barley, and oats for such seven years. The total rent-charge of each parish was apportioned between the different lands in the parish. In some cases the assessment was on each field, and in others on a whole farm together. Tithe Commissioners were appointed to carry out the provisions of the Act, especially in places where no agreement for the commutation was arrived at, and in such cases their award was made binding upon both land-owners and tithe-owners. The value of the rent-charge under the Act depends each year upon the average price of wheat, barley, and oats for the preceding seven years, and is, therefore, as all tithe-owners know, a very variable quantity. The price is based upon the weekly averages, and is published in the *London Gazette*. Special provisions were made for the payment of extraordinary rent-charges on hop-grounds, market gardens, and coppice woods, but these extraordinary rent-charges were subsequently abolished by the Extraordinary Tithe Redemption Act, 1886, whereby an annual payment calculated at 4 per cent. on the capital value of the charge was substituted.

The rent-charges created by the Act are made subject to the same rules of ownership as the tithes which they replaced, and the Act also contained special provisions as to the mode of recovery of the charges in case of non-payment. A right of

distress was given for this purpose, but this has been abolished by the Tithe Act, 1891, which provides that tithe rent-charge may be recovered by an Order of the County Court, and in no other way. Proceedings cannot be instituted until the rent-charge is three months in arrear, and not more than two years can be recovered. When the owner of land liable to payment of the rent-charge is also the occupier, the Court appoints an officer to distrain for the amount due, and in other cases an officer is appointed receiver of the rents and profits of the land until the amount has been recovered.

The tithe rent-charges were expressly made subject to all Parliamentary, parochial, and county and other rates, which were by the Act of 1836 assessed upon the occupier of the lands in respect of which the rent-charges were payable; but by the Tithe Act, 1891, the rates are assessed on and may be recovered from the owner of the tithe rent-charge.

Another important point is dealt with by the Act of 1891. Previously the rent-charge might, as has been mentioned, be recovered by distress—that is to say, upon the goods of the occupying tenant—who might or might not, as between himself and the owner of the land, be liable for the payment. The liability would depend upon the contract between the landlord and the tenant. By the Act of 1891 it is expressly provided that tithe rent-charge shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands. Any contract made after the passing of the Act for payment of the rent-charge by the occupier is void. In all cases, therefore, in which it is endeavoured to make the occupier liable, it must be shown that the liability arose on a contract made before the passing of the Act.

IV.

The redemption of tithe rent-charge can be effected through the instrumentality of the Board of Agriculture and Fisheries under the Tithe Acts, 1860 and 1878. The redemption is compulsory under the Act of 1878 in cases where land charged

with tithe rent-charge is taken for certain public purposes, the most important of which are—(1) The building of any church, chapel, or other place of worship; (2) the making of any cemetery or other place of burial; (3) the erection of any school under the Elementary Education Acts; (4) the erection of any town hall, gaol, lunatic asylum, hospital, or other building for public purposes; (5) the formation of any sewage farm, or the construction of sewers or sewage works, or any gas or water works. The amount of the redemption money is twenty-five times the amount of the rent-charge.

In other cases the Board has a discretion in the matter. The provisions of the Acts are as follows:

1. When the rent-charge does not exceed 20s., the application may be made either by the owner of the land *or* the person entitled to the rent-charge. The redemption money is twenty-five times the amount of the rent-charge.
2. When the rent-charge exceeds 20s., the application must be made by the owner of the land *and* the person entitled to the charge, and if such person is so entitled in right of any benefice or cure, both the Bishop and the patron must consent to the application. The redemption money is a sum not less than twenty-five times the amount of the rent-charge.
3. When lands charged with rent-charge have been divided for building or other purposes into numerous plots, so that no further apportionments can conveniently be made, the owner of any of the plots *or* the persons entitled to the charge may apply for the redemption. The amount payable is a sum not less than twenty-five times the amount of the charge.

In cases in which the redeemed rent-charge was payable to any spiritual person in respect of his benefice or cure, the redemption money must be paid to the Governors of Queen Anne's Bounty, and is devoted by them to the augmentation of the benefice.

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